

§ 35.928 Requirements for an industrial cost recovery system.

(a) The Regional Administrator shall approve the grantee's industrial cost recovery system and the grantee shall implement and maintain it in accordance with §§ 35.935–15 and the requirements in §§ 35.928–1 through 35.928–4. The grantee shall be subject to the noncompliance provisions of § 35.965 for failure to comply.

(b) Grantees awarded step 3 grants under regulations promulgated on February 11, 1974, or grantees who obtained approval of their industrial cost recovery systems before April 25, 1978, may amend their systems to correspond to the definition of industrial users in § 35.905 or to provide for systemwide industrial cost recovery under § 35.928–1(g).

§ 35.928–1 Approval of the industrial cost recovery system.

The Regional Administrator may approve an industrial cost recovery system if it meets the following requirements:

(a) *General.* Each industrial user of the treatment works shall pay an annual amount equal to its share of the total amount of the step 1, 2, and 3 grants and any grant amendments awarded under this subpart, divided by the number of years in the recovery period. An industrial user's share shall be based on factors which significantly influence the cost of the treatment works. Volume of flow shall be a factor in determining an industrial user's share in all industrial cost recovery systems; other factors shall include strength, volume, and delivery flow rate characteristics, if necessary, to insure that all industrial users of the treatment works pay a proportionate distribution of the grant assistance allocable to industrial use.

(b) *Industrial cost recovery period.* The industrial cost recovery period shall be equal to 30 years or to the useful life of the treatment works, whichever is less.

(c) *Frequency of payment.* Except as provided in § 35.928–3, each industrial user shall pay not less often than annually. The first payment by an industrial user shall be made not later than 1 year after the user begins use of the treatment works.

(d) *Reserve capacity.* If an industrial user enters into an agreement with the grantee to reserve a certain capacity in the treatment works, the user's industrial cost recovery payments shall be based on the total reserved capacity in relation to the design capacity of the treatment works. If the discharge of an industrial user exceeds the reserved capacity in volume, strength or delivery flow rate characteristics, the user's industrial cost recovery payment shall be increased to reflect the actual use. If there is no reserve capacity agreement between the industrial user and the grantee, and a substantial change in the strength, volume, or delivery flow rate characteristics of an industrial user's discharge share occurs, the user's share shall be adjusted proportionately.

(e) *Upgrading and expansion.* (1) If the treatment works are upgraded, each existing industrial user's share shall be adjusted proportionately.

(2) If the treatment works are expanded, each industrial user's share shall be adjusted proportionately, except that a user with reserved capacity under paragraph (d) of this section shall incur no additional industrial cost recovery charges unless the user's actual use exceeded its reserved capacity.

(f) [Reserved]

(g) *Collection of industrial cost recovery payments.* Industrial cost recovery payments may be collected on a systemwide or on a project-by-project basis. The total amount collected from all industrial users on a systemwide basis shall equal the sum of the amounts which would be collected on a project-by-project basis.

(h) *Adoption of system.* One or more municipal legislative enactments or other appropriate authority must incorporate the industrial cost recovery system. If the project is a regional treatment works accepting waste-waters from other municipalities, the subscribers receiving waste treatment services from the grantee shall adopt industrial cost recovery systems in accordance with section 204(b)(1)(B) of the Act with §§ 35.928 through 35.928–4. These industrial cost recovery systems